

FILED
Clerk
District Court

APR - 5 2012

For The Northern Mariana Islands
By _____
(Deputy Clerk)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JUNIOR LARRY HILLBROOM, an individual,

Plaintiff,

v.

BARRY J. ISRAEL, an individual; KEITH A.
WAIBEL, an individual; and DOES 1 through 10,
inclusive,

Defendants.

KEITH A. WAIBEL, an individual,

Cross Claimant,

v.

BARRY J. ISRAEL, an individual; and DOES 1
through 10, inclusive,

Cross Defendants.

KEITH A. WAIBEL, an individual,

Third-Party Plaintiff,

v.

DAVID J. LUJAN, an individual,

Third Party Defendant.

Case No.: 1-10-CV-00031

**MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S REQUEST FOR
ENTRY OF RULE 54(b) FINAL JUDGMENT
ON PLAINTIFF'S CLAIMS AGAINST
DEFENDANT ISRAEL**

On January 26, 2012, the Court granted the motion to dismiss Plaintiff's complaint as to Defendant Barry J. Israel for lack of personal jurisdiction. (See Memorandum Opinion and Order, hereafter "Dismissal Order," ECF No. 95.) Before the Court is Plaintiff's Request for Entry of Rule 54(b) Final

1 Judgment on Claims Against Defendant Israel. (*See* ECF No. 98.) Israel opposes the request. (*See* ECF
2 No. 99.)

3 A district court “may direct entry of final judgment as to one or more, but fewer than all, claims or
4 parties” involved in a case if it “expressly determines that there is no just reason for delay.” Fed. R. Civ. P.
5 54(b). This case involves multiple defendants who, Plaintiff claims, conspired to defraud him of tens of
6 millions of dollars received in a settlement of his father’s estate. The dismissal order resolved all of
7 Plaintiff’s claims against Israel, but none of the claims against Defendant Keith A. Waibel and the Does;
8 nor does it resolve Waibel’s cross claims and third-party claims for indemnity and contribution against
9 Israel and David Lujan. (*See* Answer, ECF No. 8; Third Party Complaint, ECF No. 9.)
10

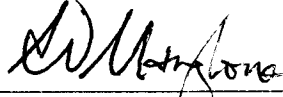
11 The factors for the district court to consider when determining whether to enter final judgment
12 pursuant to Rule 54(b) are well established: “Rule 54(b) certification is proper if it will aid expeditious
13 decision of the case. The Rule 54(b) claims do not have to be separate from and independent of the
14 remaining claims. However, Rule 54(b) certification is scrutinized to prevent piecemeal appeals in cases
15 which should be reviewed only as single units.” *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797–798 (9th Cir.
16 1991) (internal quotation marks and citations omitted).
17

18 The Court finds that there is no just reason for delay in entering final judgment as to Israel. The
19 Dismissal Order is a final disposition of all of Plaintiff’s claims against Israel. The issue involving
20 personal jurisdiction over Israel is unique to him and completely severable from the other issues to be
21 decided as to the remaining parties. *Cf. Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1484 (9th
22 Cir. 1993) (upholding Rule 54(b) certification of order dismissing some defendants for lack of personal
23 jurisdiction). The Ninth Circuit will not have to decide this personal-jurisdiction issue more than once,
24 even if there are subsequent appeals by the remaining parties. Allowing an immediate appeal would aid
25 expeditious decision of the matter and serve the efficient administration of justice.
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1 Israel asserts that because a co-defendant's cross claims against him are still pending, certification
2 of the order dismissing all of Plaintiff's claims against him would improvidently allow piecemeal
3 adjudication of claims. (See Opp. at 5.) While the risk of piecemeal appeals is a factor for the district
4 court to consider, it is not a just reason to deny Rule 54(b) certification in the circumstances of this case.
5 Rule 54(b) "permits separate treatment of the original claim and a cross-claim" even when the two claims
6 arise out of the same transaction. See *Bank of Lincolnwood v. Federal Leasing, Inc.*, 622 F.2d 944, 950
7 (7th Cir. 1980) (citing *Cold Metal Process Co. v. United Engineering & Foundry Co.*, 351 U.S. 445, 452
8 (1956)). To withhold final judgment may force Plaintiff to endure a long and expensive trial against the
9 remaining defendants before having the opportunity to secure a reversal of Israel's dismissal. To deny
10 Plaintiff entry of final judgment dismissing one alleged tortfeasor from the lawsuit because another alleged
11 tortfeasor has cross-claimed against Israel for indemnity and contribution based on the same facts and
12 circumstances would be perverse. Moreover, an appeal now will avoid the possibility of multiple,
13 protracted trials in the event that the Ninth Circuit overturns the dismissal of Israel after a first trial.
14 Defendant Waibel has not objected to certification, and Plaintiff appears to prefer the delay in proceeding
15 against Waibel to the prospect of two trials. Cf. *Chamberlain v. Harnischfeger Corp.*, 516 F. Supp. 428,
16 430 (E.D. Pa. 1981) (weighing similar factors on request for Rule 54(b) certification after dismissal of one
17 defendant for lack of personal jurisdiction).

21 For these reasons, the Court hereby GRANTS Plaintiff's Request for Entry of Rule 54(b) Final
22 Judgment on Claims Against Defendant Israel. The Clerk is directed to enter a final judgment dismissing
23 without prejudice all claims of Plaintiff Junior Larry Hillbroom against Defendant Barry J. Israel pursuant
24 to Federal Rule of Civil Procedure 54(b).

26 IT IS SO ORDERED this 5th day of April, 2012.

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RAMONA V. MANGLONA
Chief Judge